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**Ride Right, LLC and Teamsters Local Union No. 727.**  
Case 13–CA–171393

February 8, 2018

**DECISION AND ORDER**

BY CHAIRMAN KAPLAN AND MEMBERS MCFERRAN  
AND EMANUEL

Upon a charge filed March 8, 2016, by Teamsters Local Union No. 727, the General Counsel issued a complaint and notice of hearing on November 23, 2016, alleging that Ride Right, LLC, has been violating Section 8(a)(5) and (1) of the National Labor Relations Act by failing and refusing to bargain with, and by withdrawing recognition from, the Union. On December 6, 2016, the Respondent filed an answer in which it denied the commission of any unfair labor practices and asserted various affirmative defenses. On February 3 and 16, 2017, the General Counsel amended the complaint, and the Respondent filed an answer on February 28, 2017.

Also on February 28, 2017, the Respondent, the Union, and the General Counsel filed a joint motion to waive a hearing by an administrative law judge and to submit this case to the National Labor Relations Board for a decision based on a stipulated record.<sup>1</sup> On July 13, 2017, the Board granted the parties' joint motion. Thereafter, the Respondent, the Union, and the General Counsel filed briefs.

The Board has delegated its authority in this proceeding to a three-member panel.

On the entire record and briefs, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

The Respondent, a limited liability corporation with an office and place of business in Batavia, Illinois, has been engaged in the business of providing transportation services. In conducting its operations during the calendar year ending December 31, 2016, the Respondent derived gross revenues in excess of \$250,000 and purchased and received at its Batavia, Illinois facility goods valued in excess of \$5000 directly from points outside the State of Illinois. The Respondent has been an employer engaged

in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

**A. Stipulated Facts**

For approximately 12 years (from 2003 to 2015), MV Transportation contracted with Kane County, Illinois, to provide paratransit services ("PACE") from a facility in Batavia, Illinois. MV Transportation had a collective-bargaining agreement with the Union in effect from 2013 to 2018 for a unit consisting of "[a]ll full time and regular part time drivers, mechanics, and dispatchers employed by MV located at its facility in Batavia, Illinois; but excluding all clerical employees, professional employees, managerial employees, guards and supervisors as defined by the Act." In April 2015,<sup>2</sup> the Respondent outbid MV Transportation and was awarded the PACE contract for Batavia. Later that month, the Union requested that the Respondent recognize and bargain with it regarding unit employees. As recounted below, the parties subsequently discussed terms and conditions of employment for the employees.

In the meantime, on June 29, the Respondent began providing the paratransit services formerly provided by MV Transportation. Per the stipulation of the parties, unit employees "performed essentially the same job functions and provided the same services to customers, used the same equipment and vehicles, drove the same routes, operated under the same working conditions, and reported to the same supervisors as when they were employed by MV." At that time, 24 of the 32 employees working for the Respondent had previously worked in those same positions for MV Transportation. Over the next few months, the size of the Respondent's work force fluctuated slightly. By December 1, the Respondent had increased its employee complement to 41; 20 of those employees formerly worked for MV Transportation.

Between April 28 and February 23, 2016, the Union and the Respondent discussed various terms and conditions of employment on seven different occasions. The specifics of the meetings and correspondence are not in the record, but the parties stipulated that the topics they discussed included hiring, wages, seniority, and dues payment, as well as dates for bargaining and whether the Respondent would sign the collective-bargaining agreement.<sup>3</sup> On February 23, 2016, the Respondent informed the Union that it would not bargain with it.

<sup>1</sup> Notwithstanding the title of the parties' motion, "Joint Motion to Submit Stipulated Record to the Administrative Law Judge and Joint Stipulation of Facts," it is clear that they intended to waive a hearing and decision by an administrative law judge and to transfer the proceedings to the Board for a decision based on the stipulated record.

<sup>2</sup> All subsequent dates are in 2015 unless otherwise noted.

<sup>3</sup> The parties also stipulated that the Union lost a deauthorization election on May 28. Despite mentioning this fact in its brief, the Re-

### B. The Parties' Contentions

The issue presented is whether the Respondent has an obligation to recognize and bargain with the Union as a legal successor to MV Transportation, such that the Respondent's refusal to recognize and bargain with the Union violates Section 8(a)(5), and whether its actions in February 2016 constituted a withdrawal of recognition in violation of Section 8(a)(5).

The General Counsel and the Union maintain that the Respondent, as a successor to MV Transportation, had a duty to bargain with the Union beginning June 29, that the Respondent bargained about terms and conditions of employment for the unit until it withdrew recognition on February 23, 2016, and that it subsequently failed and refused to bargain.

The Respondent stipulated that it substantially continued MV Transportation's operations, and it does not dispute that the Union requested recognition in an appropriate unit. It contends, however, that the General Counsel and the Union err in asserting that a duty to bargain attached on June 29, before the Respondent had finalized its hiring. Instead, the Respondent asserts that it did not reach a substantial and representative complement of employees until December, and that, at that time, only 20 of its 41 employees had been unit employees of MV Transportation. The Respondent also claims that any failure to recognize the allegation is barred by Section 10(b) because it has unequivocally rejected the Union's demand for recognition and bargaining since June 29. Finally, the Respondent contends that it could not have unlawfully withdrawn recognition from the Union because it never recognized it in the first place.

### C. Discussion

It is well established that an employer is a successor employer, obligated to recognize and bargain with a union representing the predecessor's employees, when (1) there is a substantial continuity of operations, (2) the union makes a timely demand to bargain for an appropriate unit, and (3) the employer has hired a "substantial and representative complement" of employees, the majority of whom were represented by the union under the predecessor. *Fall River Dyeing & Finishing Corp. v. NLRB*, 482 U.S. 27, 43, 47 (1987). The parties stipulated to the substantial continuity of operations, and the Respondent does not contest the timeliness of the Union's

demand or the appropriateness of the unit. Accordingly, the issue to be resolved is the date upon which the Respondent employed a substantial and representative complement of employees and the makeup of the prospective unit at that time.

Under *Fall River Dyeing*, a substantial and representative complement of employees will be found to exist at the point at which an employer's job classifications are substantially filled, its operations are in substantially normal production, and it does not reasonably expect to increase the number of unit employees. *Id.* at 49. Neither the Board nor the courts have established a fixed minimum percentage of the total employees hired that must be reached in order to establish a substantial and representative complement of employees, but the Court in *Fall River Dyeing* explicitly rejected the position that a substantial and representative complement exists only when the employer has completed hiring. *Id.* at 49–51.<sup>4</sup>

The Respondent argues that it reached a substantial and representative complement when it achieved its "ultimate work force totals" of 41 employees in December. We find no merit in this contention. The Respondent's argument effectively equates substantial and representative complement with full employee complement, a proposition that the Supreme Court expressly rejected in *Fall River Dyeing*. *Id.*

In support of its argument, the Respondent erroneously relies on *Myers Custom Products*, 278 NLRB 636, 637 (1986), where the Board found that the respondent's initial refusal to bargain did not violate the Act. In *Myers*, the respondent had a definite plan to expand its work force in a short period of time, and the parties stipulated that "the [r]espondent planned, before commencing operations, to take 2 to 3 months to select and train a full employee complement." *Id.* In fewer than 60 days, the respondent had hired its full complement of 25 employees, only 10 of whom had worked for the predecessor. *Id.* The Board found no violation because the short delay in calculating the union's majority status, given the respondent's definite plan to expand, "maximize[d] the number of employees selecting a bargaining representative." *Id.*; see also *Fall River Dyeing*, above at 47. Here, the parties did not stipulate, and there is no evidence in the record to show, that the Respondent had definite plans to substan-

spondent fails to explain its significance to the present case, and we see none. See *Wisconsin Porcelain Co.*, 349 NLRB 151, 152 (2007) ("[A] union may enjoy majority support even if less than a majority of employees . . . authorize their employer to deduct union dues from their paychecks.") (quoting *McDonald Partners, Inc. v. NLRB*, 331 F.3d 1002, 1006 (D.C. Cir. 2003)).

<sup>4</sup> Accord: *Windsor Convalescent Center of North Long Beach*, 351 NLRB 975, 978 (2007) (rejecting respondent's argument that bargaining obligation did not begin until full complement of employees hired), *enfd.* in relevant part sub nom. *S&F Market Street Healthcare LLC v. NLRB*, 570 F.3d 354 (D.C. Cir. 2009); *M.U. Industries*, 284 NLRB 388, 388 (1987) (substantial and representative complement when 55% of eventual work force hired); *Jeffries Lithograph Co.*, 265 NLRB 1499, 1504–1505 (1982) (substantial and representative complement when 48% of eventual work force hired), *enfd.* 752 F.2d 459 (9th Cir. 1985).

tially increase the work force within a short and specified time period.<sup>5</sup> Although the stipulated record states that the Respondent asked the Union how to recruit additional union drivers, the record does not establish the number of drivers the Respondent intended to hire, nor the period of time over which it intended to hire them. In fact, the Respondent only sporadically increased the size of its work force, ultimately adding nine employees to its work force (an increase of 28 percent) over 5 months. In any event, *Myers* does not support the Respondent's position that a substantial and representative complement exists only when an employer has hired its full employee complement.

Rather, in agreement with the General Counsel and the Union, we find that the Respondent achieved a substantial and representative complement when it assumed MV Transportation's operations on June 29. At that point, it had substantially filled its job classifications, it was providing normal paratransit service in the same manner as did MV Transportation, and it had no definite plan to expand. Further, a majority of the 32 employees whom the Respondent employed on June 29 had been represented by the Union at MV Transportation. We therefore find that the Respondent had an obligation to recognize and bargain with the Union when it began performing paratransit services on June 29.<sup>6</sup>

The Respondent also argues that, even if the duty to bargain attached June 29, the allegations in this case are nonetheless barred by Section 10(b). It contends that the Union has had clear notice of its rejection of the Union's demand for recognition and bargaining since June 29, and that, therefore, the March 2016 charge is untimely. We again disagree.

It is well established that "the Section 10(b) period does not begin to run until the aggrieved party has received actual or constructive notice of the conduct that

constitutes the alleged unfair labor practice" and, further, that the respondent bears the burden to establish that the union had clear and unequivocal notice more than 6 months before the charge was filed. *Concourse Nursing Home*, 328 NLRB 692, 694 (1999). The Board has recognized that a delay in filing charges is not attributable to a charging party when the delay "is a consequence of conflicting signals or otherwise ambiguous conduct by the other party." *A & L Underground*, 302 NLRB 467, 469 (1991).

Because we find that the Respondent engaged in such ambiguous conduct here, we find that the March 2016 charge was not time-barred. The Respondent communicated with the Union seven times between April 2015 and February 2016. Although the specifics of the communications are not part of the record, the parties stipulated that they concerned various terms and conditions of employment. At the very least, the Respondent's actions created ambiguity as to whether the Respondent actually recognized the Union as the employees' collective-bargaining representative. Because the Respondent did not give the Union clear and unequivocal notice that it was refusing to recognize and bargain with the Union until February 23, 2016, we find that the Union's March 2016 charge was timely filed well within the 6-month statutory period.

Accordingly, we conclude that the Respondent violated Section 8(a)(5) and (1) of the Act when it refused to recognize and bargain with the Union on June 29, 2015.<sup>7</sup>

#### CONCLUSIONS OF LAW

1. The Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union has been a labor organization within the meaning of Section 2(5) of the Act.

3. Since June 29, 2015, the Respondent has been failing and refusing to recognize and bargain with the Union in violation of Section 8(a)(5) and (1) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices in violation of Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.<sup>8</sup>

<sup>5</sup> See also *Everfresh Beverages*, 323 NLRB 357, 357 (1997) (no legitimate basis for deferring bargaining beyond date of union's demand where respondent lacked objective basis for expectation that work force would triple), *enfd.* 162 F.3d 1162 (6th Cir. 1998); *Delta Carbonate*, 307 NLRB 118, 118 (1992) (delay not justified where expansion plans not certain or predictable in timing or scope), *enfd.* 989 F.2d 486 (3d Cir. 1993); *Hospital San Francisco*, 293 NLRB 171, 174 (1989) (same), *enfd.* 930 F.2d 906 (1st Cir. 1991); *M.U. Industries*, 284 NLRB at 388 (*Myers* distinguishable because in *Myers*, parties stipulated to expansion plans).

<sup>6</sup> We do not consider the Respondent's argument that by December 1, only 20 of the 41 employees employed on that date had worked for the predecessor, because the Respondent's bargaining obligation attached on June 29, when 24 of its 32 employees—a clear majority—had previously worked for MV Transportation, and subsequent employee turnover does not affect our evaluation of the Union's majority status. See *Levitz Furniture Co. of the Pacific*, 333 NLRB 717, 728 *fn.* 60 (2001).

<sup>7</sup> Given our findings, we do not pass on whether the Respondent unlawfully withdrew recognition from the Union on February 23, 2016, because it does not materially affect the remedy.

<sup>8</sup> We deny the Union's request for monetary relief because the complaint allegations do not raise the issue of whether the Respondent unilaterally changed the unit employees' terms and conditions of em-

## ORDER

The National Labor Relations Board orders that the Respondent, Ride Right, LLC, Batavia, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with Teamsters Local Union No. 727 (the Union) as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full time and regular part time drivers, mechanics, and dispatchers employed by the Employer at its facility currently located at 1375 Paramount Parkway, Batavia, Illinois; excluding all clerical employees, professional employees, managerial employees, guards and supervisors as defined by the Act.

(b) Within 14 days after service by the Region, post at its facility in Batavia, Illinois, copies of the attached notice marked "Appendix"<sup>9</sup> in English and Spanish. Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices in each language deemed appropriate shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in

ployment, nor does the record reflect whether the Respondent made any such changes.

<sup>9</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice in each appropriate language, to all current employees and former employees employed by the Respondent at any time since June 29, 2015.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 13 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. February 8, 2018

Marvin E. Kaplan, Chairman

Lauren McFerran, Member

William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD  
APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

## FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with Teamsters Local Union No. 727 (the Union) as the exclusive collective-bargaining representative of our employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain with the Union as the exclusive collective-bargaining representative of our employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full time and regular part time drivers, mechanics, and dispatchers employed by the Employer at its facility currently located at 1375 Paramount Parkway, Batavia, Illinois; excluding all clerical employees, professional employees, managerial employees, guards and supervisors as defined by the Act.

RIDE RIGHT, LLC

The Board's decision can be found at <https://www.nlr.gov/case/13-CA-171393> or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

